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*Attorneys for Defendants Ripple Labs Inc.,
XRP II, LLC, and Bradley Garlinghouse*

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

In re RIPPLE LABS INC. LITIGATION

Case No. 4:18-cv-06753-PJH

This Document Relates to:
ALL ACTIONS

**DECLARATION OF ANA GUARDADO
IN SUPPORT OF LEAD PLAINTIFF'S
ADMINISTRATIVE MOTION TO FILE
UNDER SEAL MATERIALS RELATING
TO LEAD PLAINTIFF'S REPLY IN
SUPPORT OF HIS MOTION TO
COMPEL PRODUCTION OF
DOCUMENTS AND PRIVILEGE LOG**

1 I, Ana Guardado, declare as follows:

2 1. I am Litigation Counsel at Ripple Labs Inc. I make this declaration in support of
3 Lead Plaintiff's Administrative Motion to File Under Seal Materials Relating to Lead Plaintiff's
4 Reply in Support of His Motion to Compel Production of Documents and Privilege Log
5 ("Motion to Seal"), Dkt. 132. Based on my personal experience, knowledge, and review of the
6 files, records, and communications in this case, I have personal knowledge of the facts set forth
7 in this Declaration and, if called to testify, could and would testify competently to those facts
8 under oath.

9 2. Plaintiff's Motion to Seal seeks to redact portions of Plaintiff's Reply and five
10 exhibits (the "Protected Materials"), described in greater detail below. Defendants Ripple Labs
11 Inc., XRP II, LLC, and Bradley Garlinghouse (collectively, "Ripple") designated these
12 documents as "HIGHLY CONFIDENTIAL – ATTORNEY'S EYES ONLY" under the
13 Stipulated Protective Order as Modified by the Court ("Protective Order"), Dkt. 120, and
14 Plaintiff was thus compelled to file these documents under seal. Ripple now submits this
15 declaration, pursuant to the Protective Order and Civil Local Rule 79-5(d)-(e), in support of the
16 Motion to Seal.

17 3. For "sealed materials attached to a discovery motion unrelated to the merits of a
18 case . . . a party need only satisfy the less exacting 'good cause' standard." *Ctr. for Auto Safety*
19 *v. Chrysler Grp., LLC*, 809 F.3d 1092, 1097 (9th Cir. 2016) (citing *Foltz v. State Farm Mut.*
20 *Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003)); *see also In re NCAA Student-Athlete Name*
21 *and Likeness Licensing Litig.*, No. 09-cv-01967 CW (NC), 2013 WL 1997252 (N.D. Cal. May
22 13, 2013) (finding that "[s]ources of business information that might harm a litigant's
23 competitive standing often warrant protection under seal" and sealing various documents
24 containing confidential and commercially sensitive information) (internal quotation marks and
25 citation omitted). In addition, courts in this District and Circuit "have long recognized the
26 general policy of protecting settlement negotiations and communications in order to promote
27 settlement." *Celgard, LLC v. Targray Tech. Internat'l Inc.*, 2019 WL 3841997, at *2-*3 (N.D.
28 Cal. Aug. 15, 2019) (citing *United States v. Contra Costa Cty. Water Dist.*, 678 F.2d 90, 92 (9th

1 Cir. 1982)); *see also Seals v. Mitchell*, 2011 WL 1233650, at *5 (N.D. Cal. Mar. 30, 2011)
2 (sealing settlement discussions).

3 4. I have reviewed each portion of the Protected Materials, which are described
4 below. The Protected Materials all describe and relate to Ripple's preliminary and confidential
5 settlement communications with the SEC during the course of a multi-year enforcement
6 investigation. Following that investigation, the SEC filed a civil enforcement action in the
7 Southern District of New York, and Ripple is actively engaged in defending itself in that ongoing
8 litigation.

9 5. Ripple produced the Protected Materials to Plaintiff in redacted form. Ripple
10 redacted all discussion of settlement terms and negotiations, but it left unredacted and produced
11 to Plaintiff the factual and legal analyses underlying the settlement negotiations. The redactions
12 are at issue in Plaintiff's Motion to Compel and not subject to this Motion to Seal. This Motion
13 to Seal concerns the unredacted portions of these settlement communications, which include the
14 factual and legal analyses portions of these settlement discussions.

15 6. These unredacted factual and legal analyses are themselves part of Ripple's
16 settlement communications. These analyses include discussions of different aspects of Ripple's
17 business and relevant legal analyses, as they relate to the redacted settlement terms and
18 negotiations. As such, disclosure of these materials could give the public, including other
19 government regulatory entities, insight into the topics at issue in Ripple's confidential,
20 preliminary and thus far unsuccessful settlement negotiations and the topics included in the
21 redacted terms of those discussions. Disclosure would also give Ripple's competitors unfair and
22 non-public insight into Ripple's confidential analysis of certain aspects of its business discussed
23 therein.

24 7. As settlement communications and confidential discussions of Ripple's business,
25 the Protected Materials are highly sensitive, and their disclosure would create a substantial risk
26 of serious harm, including harm to Ripple's standing in the SEC action and other pending
27 actions, as well as its ability to settle those actions. There is also a substantial risk of harm to
28 Ripple's competitive standing from a business perspective because of the discussions of certain

aspects of Ripple's business. I therefore submit that good cause exists to seal the Protected Materials, as described below.


Documents to be Filed Under Seal	Line Nos. to be Redacted / Sealed in Full	Basis for Sealing
Portions of Lead Plaintiff's Reply in Support of His Motion to Compel Production of Documents and Privilege Log	6:15-17 6:25-28 7:1-5	The redacted portions of Plaintiff's Reply describe underlying exhibits that are themselves sealed. Because good cause exists to seal the underlying exhibits, as described below, these descriptions of the exhibits should also be redacted.
Burningham Decl. Exhibit 1 (RPLI_00302981)	Sealed in Full	Exhibit 1 is a letter from Ripple's counsel to the SEC labeled as a Rule 408 Communication. It includes settlement discussions between Ripple and the SEC, and factual and legal analysis relevant to those discussions. Ripple is now actively litigating a suit filed by the SEC when the parties failed to reach a settlement. Ripple considers all nonpublic information related to the SEC's pre-filing investigation, including and in particular settlement discussions conducted during the investigation, to be highly confidential, and disclosure of this material would create a substantial risk of serious harm. Ripple believes its standing in the SEC action and other pending actions, including its ability to settle the SEC action and other pending actions, would be negatively impacted by the disclosure of this document.
Burningham Decl. Exhibit 2 (RPLI_00302989)	Sealed in Full	Exhibit 2 is a letter from Ripple's counsel to the SEC labeled as a Rule 408 Communication. It includes settlement discussions between Ripple and the SEC, and factual and legal analysis relevant to those discussions. Ripple is now actively litigating a suit filed by the SEC when the parties failed to reach a settlement. Ripple considers all

		nonpublic information related to the SEC's pre-filing investigation, including and in particular settlement discussions conducted during the investigation, to be highly confidential, and disclosure of this material would create a substantial risk of serious harm. Ripple believes its standing in the SEC action and other pending actions, including its ability to settle the SEC action and other pending actions, would be negatively impacted by the disclosure of this document.
Burningham Decl. Exhibit 3 (RPLI_00303004)	Sealed in Full	Exhibit 3 is a letter from Ripple's counsel to the SEC labeled as a Rule 408 Communication. It includes settlement discussions between Ripple and the SEC, and factual and legal analysis relevant to those discussions. Ripple is now actively litigating a suit filed by the SEC when the parties failed to reach a settlement. Ripple considers all nonpublic information related to the SEC's pre-filing investigation, including and in particular settlement discussions conducted during the investigation, to be highly confidential, and disclosure of this material would create a substantial risk of serious harm. Ripple believes its standing in the SEC action and other pending actions, including its ability to settle the SEC action and other pending actions, would be negatively impacted by the disclosure of this document.
Burningham Decl. Exhibit 4 (RPLI_00303011)	Sealed in Full	Exhibit 4 is a letter from Ripple's counsel to the SEC labeled as a Rule 408 Communication. It includes settlement discussions between Ripple and the SEC, and factual and legal analysis relevant to those discussions. Ripple is now actively litigating a suit filed by the SEC when the parties failed to reach a settlement. Ripple considers all

		nonpublic information related to the SEC's pre-filing investigation, including and in particular settlement discussions conducted during the investigation, to be highly confidential, and disclosure of this material would create a substantial risk of serious harm. Ripple believes its standing in the SEC action and other pending actions, including its ability to settle the SEC action and other pending actions, would be negatively impacted by the disclosure of this document.
Burningham Decl. Exhibit 5 (RPLI_00303032)	Sealed in Full	Exhibit 5 is a letter from the SEC to Ripple's counsel concerning the SEC's investigation of Ripple. It includes discussion of the parties' efforts to reach a settlement, related factual and legal analysis, and the SEC's related requests for information. The letter itself calls the SEC's investigation "non-public." Ripple is now actively litigating a suit filed by the SEC when the parties failed to reach a settlement. Ripple considers all nonpublic information related to the SEC's pre-filing investigation, including and in particular settlement discussions conducted during the investigation, to be highly confidential, and disclosure of this material would create a substantial risk of serious harm. Ripple believes its standing in the SEC action and other pending actions, including its ability to settle the SEC action and other pending actions, would be negatively impacted by the disclosure of this document.

8. For the reasons stated above, Ripple respectfully requests that the Court grant the Motion to Seal and allow the Protected Materials to remain under seal.

1 I declare under penalty of perjury that the foregoing is true and correct. Executed this 4th
2 day of March, 2021, in San Francisco, California.

3
4 
5 Ana Guardado

ATTESTATION PURSUANT TO CIVIL L.R. 5-1(i)(3)

I, Suzanne E. Nero, am the ECF user whose login is being used to file the foregoing document. I attest pursuant to Civil L.R. 5-1(i)(3) that Ana Guardado has concurred in this filing.

Dated: March 5, 2021

By: /s/ Suzanne E. Nero

Suzanne E. Nero